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IN THE

Supreme Court of the United States

October Term, 1968
No. 65

EVELLE J. YOUNGER, District Attorney of the County of LOS ANGELES, STATE OF CALIFORNIA,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

SIRHAN BISHARA SIRHAN,

Real Party in Interest.

Petition for a Writ of Certiorari to the Court of Appeal and Supreme Court of California.

EVELLE J. YOUNGER,
District Attorney of the County of Los Angeles, State of California.
600 Hall of Justice,
Los Angeles, Calif. 90012,
Petitioner in Propria Persona.

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vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

SIRHAN BISHARA SIRHAN,

Real Party in Interest.

Petition for a Writ of Certiorari to the Court of Appeal and Supreme Court of California.

Petitioner prays that a writ of certiorari issue to the California Court of Appeal, and to the Supreme Court of California, to review their judgment in denying a petition for a writ of mandate directed to the Superior Court of the State of California for the County of Los Angeles.

OPINION BELOW (ABSENT).

The California Court of Appeal denied the petition for a writ of mandate, without hearing or opinion, on September 25, 1968, under applicable California law, said denial became final immediately, except for an opportunity by the California Supreme Court to grant a

hearing in the matter. Such a hearing was duly requested by petitioner, but was denied, without any hearing or opinion, on October 3, 1968.

JURISDICTION.

The judgment of the California Court of Appeal became final on October 3, 1968, by denial of a hearing of the Supreme Court of the State of California. The jurisdiction of this court is invoked under 28 U.S.C. 1257(3), in that petitioner is claiming a right, privilege and immunity specially set up and claimed under the Constitution of the United States. This is the right of freedom of speech, and of the press, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Pursuant to Rule 23(1)(f), to show the history of the raising of this question in the state courts, petitioner has attached to this petition, as an Appendix I, a copy of his petition for a hearing in the Supreme Court of California. This incorporates all proceedings prior to the denial of a hearing by the California Supreme Court. Petitioner asks that Appendix I be included in this petition by reference, as though set out herein in *haec verba.*

A brief partial résumé thereof is:

On June 7, 1968, the real party in interest was indicted for the murder of United States Senator Robert Kennedy. The same day, the respondent Superior Court issued the "Order re Publicity." Petitioner unsuccessfully sought to have this order modified, but on August 2, 1968, the order, in substantially its original form, was continued in effect. [Original order is at Appendix I, Ex. 1-A; final order, at *ibid.*, Ex. 1-E.]

Under state law, no appeal lay from the action of the respondent Superior Court, so petitioner's only remedy was by way of a petition for a writ of mandate in the Court of Appeal [Appendix I, Ex. 1]. This was duly sought about September 10, 1968 [Appendix I, Ex. 1], and was denied without either hearing or opinion [*Ibid.*, Ex. 2], which denial became final, as indicated above, on October 3, 1968.

RECORD BELOW.

On October 14, 1968, petitioner filed a notice of intention to petitioner for certiorari, and request for certification of record, in the California Court of Appeal. We have attached this hereto as Appendix II. Because of the nearness of this trial date, Petitioner respectfully requests that, if necessary, this court consider this petition on the basis of the proceedings as are incorporated as the exhibits to petitioner's Petition for Hearing in the California Supreme Court, which is attached hereto as Appendix I.

On October 14, 1968, the respondent Superior Court heard a defense motion for a continuance in the underlying prosecution, *People of the State of California v. Sirhan Bishara Sirhan,* L.A. Crim. No. A-233 421, and refixed the trial date for December 9, 1968.

QUESTION PRESENTED.

Whether the United States Constitution provides any judicial remedy in cases where a trial court *fails to balance* the right of free speech and a free press, as against the need for a fair trial, in that the trial court gives *no weight* whatsoever to the First Amendment, free speech and free press rights, by totally suppressing the public's only possible sources of information about a

matter of the most intense public interest? This will be discussed more fully below.

REASONS FOR GRANTING CERTIORARI.

Introduction: the following are those petitioner believes are particularly germane to the grant of certiorari; we ask that the Court also consider matter addressed to trial court, asking it to modify its order, as is set out in Appendix I, Exhibit 1-D.

(1) *The subject matter is appropriate.* In view of the numerous recent decisions of this Court in the area of both First Amendment rights (free speech and free press are here in issue), and Fourteenth Amendment due process rights (the fair trial principle here involved), the subject matter is appropriate for consideration.

We next consider whether the instant case is appropriate in that it is either of great importance itself, or the importance of the issues it presents are of great importance in that they extend far beyond the mere interests of the parties to this lawsuit itself. Petitioner respectfully submits this cause qualifies on both grounds, for the following reasons:

(2) *The instant case merits consideration.*

(a) The Instant Case Is One of First Instance in Seeking to Establish Consideration for the Constitutional Free Speech and Free Press Rights, at Least to Be Balanced Against Constitutional Due Process Rights.

So far, cases have involved a convicted defendant, who seeks to overturn his conviction by claiming denial of a fair trial by reason of undue publicity. Naturally, opportunities to litigate and adjudicate the "free press-fair trial" problem will usually arise this way. However, we submit that this Court will do the nation a disservice if it only looks at problems involving Constitutional conflicts from one point of view. In the "free press-fair trial" area this may lead to a result this Court has often, in other contexts, rejected: causing lower courts, from fear of reversals, to resolve this issue by making as broad a "gag" order as is possible without restricting access to witnesses. This will have the inhibiting effect on exercise of First Amendment rights which this Court has long refused to tolerate (going back at least to the *prior restraint* prohibition of *Near v. Minnesota,* 283 U.S. 697). The mere possible danger of inhibiting booksellers has also proven sufficient to limit the power of states to cast on booksellers the affirmative duty to determine whether their wares are obscene.

Thus, to develop a balance between competing Constitutional rights, it will be necessary for this Court, *at some time,* to consider a case wherein a trial court has gone too far in abridging the First Amendment rights.

Petitioner submits the instant case is as appropriate a one as is likely to arise in this area, particularly in

view of the public importance of the underlying events, which we will now consider.

(b) The Importance of the Underlying Events Alone Are Sufficient to Make This a Case of Great Importance.

Petitioner submits that we should not ignore that, *for ample and serious reasons*, there is world wide interest in the events underlying this petition. This interest involves weighty interests of state, *i.e.*, matters having national and even international political significance. We stress this because it contrasts so vividly with what seems to be the usual reasons causing a criminal case to have high publicity value, such as a spectacular crime, or some sort of scandle involving entertainment celebrities. Petitioner stresses this because political and governmental questions (rather than gossip columns and titillating scandals) have always been considered as lying at the heart of the reasons for the existence of freedom of speech and of the press.

(c) The Trial Court's Order Will Prevent Responsible Answer to Irresponsible Attacks on Governmental and Judicial Process.

A further reason for allowing *some* comment or dissemination of news in this matter is the obvious danger that there will be irresponsible charges or rumors circulated about these events. Petitioner stresses this as a separate topic because *this danger is very real and present:* we need look no further than the murder of President Kennedy, the brother of the deceased Senator-Presidential candidate, to see how far such charges can go. The irresponsible attacks on the Warren Commission show that no matter how impartial, distin-

guished, disinterested, or diverse the politics, of an investigative body are, fantastic charges may be levied.

Surely this danger is greatly increased when disclosure is limited to a trial conducted under the often restrictive rules of evidence in criminal cases, with but a single judge, and a jury which does not render a reasoned opinion with its verdict.

Petitioner submits the only feasible way to meet this danger of false charges and rumors is to allow responsible public officials to indicate, on occasion, why certain witnesses have not been used, or how certain leads have proven false or irrelevent. Only by this means can we reasonably expect to do something nearly as important as justice (or a fair trial) for a free society: *showing that justice is in fact done.*

(d) This Matter Must Be Considered Now or It Will Become Moot.

If certiorari is now denied, the trial will be held subject to the "order re publicity" under attack herein. Once the criminal trial has been concluded, there will be no opportunity to test the order on appeal, since (i) the People cannot appeal an acquittal and (ii) the real party in interest, in acquiescing in the order, cannot raise this point on appeal if convicted. A conviction would mean that information the public is entitled to could not be released *until both trial and appeal are concluded.*[1] By California law, an appeal is automatic in a death penalty case. California Penal Code 1239(b).

---

[1]While the order does not specify its own duration, ordinary prudence would keep all connected with the prosecution from violating it unless and until a conviction became final, in order not to prejudice the People's position in event a reversal required a retrial.

This may well take two years, even if no reversal and retrial is involved.

The vice of the trial court's order is it inhibits exercise of First Amendment right of both persons to speak, and of the public to know, throughout that period.

(e) The Trial Court's Order Is an Unconstitutional Suppression of First Amendment Rights Because It Is Unsupported by Any Showing That Exercise of Those Rights Would Infringe Upon Defendant's Right to a Fair Trial.

As the trial court's order was issued *sua sponte,* we submit this does not do away with the basic requirement that there be some basis for its suppression of free speech and freedom of the press. Thus the order appears to rest on the unproved theory that any utterances of the type banned could only tend to defeat a fair trial. Petitioner submits that free speech is too vital a right in a free society to be so lightly disregarded.

CONCLUSION.

For the foregoing reasons the petition for a writ of certiorari should be granted, together with any further relief this Court may deem just and proper, considering the nearness of the underlying trial now set for December 9, 1968.

Respectfully submitted,

EVELLE J. YOUNGER,
District Attorney of the County of Los Angeles, State of California.
Petitioner in Propria Persona.

APPENDIX I.

Petition for Hearing on Denial of Writ of Mandate and Prohibition.

In the Supreme Court of the State of California.

Evelle J. Younger, Petitioner, v. Superior Court of the State of California for the County of Los Angeles, Respondent, Sirhan Bishara Sirhan, Real Party in Interest. 2d Civ. No. 33638.

TO ROGER TRAYNOR, CHIEF JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

1. On September 10, 1968, petitioner herein filed a petition for writ of mandate and prohibition in the Court of Appeal, a true copy of which, together with its appropriate appendices.[1] is attached hereto as Exhibit 1 and incorporated herein by reference as though set forth in full.

2. Thereafter, on September 25, 1968, said court denied, without opinion, the petition for writ of mandate

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[1]It should be noted that Appendix E as filed with the Court of Appeal is not identical to Appendix E attached hereto because, in the course of preparing this petition, it was noted that, due to an oversight, the order filed as Appendix E in the Court of Appeal does not truly reflect the final order made by the trial court. These differences, however, do not materially affect the merits of this case and are as follows: (1) Appendix E as filed in the Court of Appeal contains an introductory paragraph which the final order attached hereto as Appendix E no longer contains; (2) Appendix E as filed in the Court of Appeal contains the signature of Judge Arthur Alarcon and the date June 7, 1968, when, in fact, the order presently in effect and attached hereto as Appendix E is signed by Judge Richard Schauer and is dated August 2, 1968; and (3) Appendix E as attached hereto now contains the word "source" on page 2, line 30 whereas the Appendix E filed with the Court of Appeal did not have this word at that place.

and prohibition. A true copy of this denial is attached hereto as Exhibit 2 and incorporated herein by reference as though set forth in full, in accordance with rule 28(d) of the California Rules of Court.

3. Pursuant to rule 29(a) of the California Rules of Court, the petitioner contends the following as the reasons for requesting this court to grant a hearing:

This petition raises important questions regarding the restriction of pretrial publicity in a criminal case which have never been considered or resolved by this court and which are becoming more and more crucial to the proper administration of justice in criminal cases. While the courts of appeal have had occasion recently to consider a number of the various aspects of the problem (see, for example, *County of Los Angeles v. Superior Court*, 253 Cal.App.2d 670 [1967], and *Craemer v. Superior Court*, 265 A.C.A. 234, decided August 27, 1968), this court has made no recent expression of its views other than in the context of a change of venue. (See *Maine v. Superior Court*, 68 A.C. 386 [1968].) In light of the importance of this matter, we respectfully suggest that the time has now come for this court to provide guidance for both the bar and the judiciary in the State of California as to the judicial principles properly applicable to the issues of pretrial publicity. Just as this court believed it important to establish a proper frame of reference for the guidance of the bar and the judiciary in *Maine v. Superior Court, supra*, we suggest that this case presents a similar opportunity to formulate the criteria necessary to properly balance the right of public officials to exercise their freedom of speech, the right of the public to be informed of matters pertaining to pending crim-

inal cases, and the right of the defendant to obtain a fair trial. In this regard it should be noted that defendant's trial is presently set for November 1, 1968, and thus it becomes even more important that this court speedily resolve the problem in order that its ruling may be of benefit to the parties in this case.

WHEREFORE, petitioner prays that:

1. Petitioner be granted a hearing by this court upon his petition for writ of mandate and prohibition;

2. Petitioner be granted the relief prayed for in his petition as set forth in Exhibit "1"; and

3. Petitioner be granted such other and further relief as may be deemed appropriate and just.

Respectfully submitted,
EVELLE J. YOUNGER
District Attorney of
Los Angeles County
Attorney in Propria Persona

VERIFICATION

The allegations in the foregoing petition for hearing on denial of writ of mandate and prohibition are alleged as true by the undersigned public official, acting in the course and scope of his official capacity.

DATED. SEPTEMBER 26, 1968

Executed at Los Angeles, California.

EVELLE J. YOUNGER
District Attorney of
Los Angeles County

EXHIBIT 1.

Petition for Writ of Mandate and Prohibition.

Court of Appeal of the State of California, Second Appellate District.

Evelle J. Younger, Petitioner, v. Superior Court of the State of California for the County of Los Angeles, Respondent, Sirhan Bishara Sirhan, Real Party in Interest. 2d Civ. No.

COMES NOW EVELLE J. YOUNGER, District Attorney of the County of Los Angeles, on his own behalf and on behalf of the People of the State of California, and by this petition seeks a writ of mandate and prohibition, as authorized and provided for by Rule 56 of the California Rules of Court and Sections 1085, 1086, 1102 and 1103 of the Code of Civil Procedure, to require the respondent Superior Court to annul its "Order Re Publicity" issued on June 7, 1968, as modified on July 19, 1968, and August 2, 1968, which order prohibits, under threat of punishment for contempt, the District Attorney and other named parties from disseminating any information whatsoever (except for the limited matters set forth below) relating to the investigation and prosecution of a case now pending in the Superior Court entitled *People of the State of California v. Sirhan Bishara Sirhan,* No. A-233421. In support of this petition, petitioner alleges as follows:

I

On June 7, 1968, the Grand Jury in and for the County of Los Angeles returned an indictment, No. A-233421, in to respondent court charging Sirhan Bishara Sirhan with the crime of Murder in Count I thereof, and with the crimes of Assault With a Deadly

Weapon With Intent to Commit Murder in Counts II, III, IV, V and VI.

II

The respondent court accepted the indictment and declared same to be a true bill on June 7, 1968.

III

On June 7, 1968, the said Sirhan Bishara Sirhan was arraigned on the said indictment by the respondent court, and the matter was continued until June 28, 1968 for plea.

IV

On June 7, 1968, the respondent court issued an "Order Re Publicity," a copy of which is attached hereto as Appendix A, and it is requested that this order be received with the same force and effect as though incorporated into this petition *in haec verba.*

V

On June 28, 1968, the respondent court continued this matter for plea at the defendant's request to the date of July 19, 1968.

VI.

On July 19, 1968, the respondent court continued the matter again for plea at the request of the defendant to August 2, 1968.

VII

On July 19, 1968, the District Attorney of Los Angeles County, petitioner herein, filed in the respondent court written notice of motion to vacate or modify the order of June 7, 1968. A copy of this notice of motion is attached hereto as Appendix B, and it is requested that it be received with the same force and effect as though incorporated into this petition *in haec verba.*

Hearing on the motion was continued to the date of August 2, 1968.

VIII

On July 19, 1968, the court on its own motion modified the existing order of June 7, 1968 in several particulars. A copy of the order as modified is attached hereto as Appendix C, and it is requested that this order be received with the same force and effect as though incorporated into this petition *in haec verba.*

IX

On August 2, 1968, the District Attorney of Los Angeles County filed in the respondent court a document entitled "Argument and Points and Authorities in Support of Motion to Vacate or Modify Order of June 7, 1968 Re Publicity," together with a proposed new "Order Re Publicity." A copy of these two documents is attached hereto as Appendix D, and it is requested that they be received with the same force and effect as though incorporated into this petition *in haec verba.* Counsel for the defendant and *amici curiae* filed Points and Authorities in opposition to the said motion. Thereafter the respondent court heard oral arguments and denied the motion in its entirety. A reporter's transcript of this hearing is being lodged with this court pursuant to this petition, and it is requested that this transcript be received with the same force and effect as though incorporated into this petition *in haec verba.*

X

On August 2, 1968, the respondent court, on its own motion, effected an insubstantial modification of the instant order. The final "Order Re Publicity," as heretofore modified, is attached hereto as Appendix E,

and it is requested that this order be received with the same force and effect as though incorporated into this petition *in haec verba*.

XI

On August 2, 1968, the defendant entered a plea of not guilty to the charges set forth in the indictment and November 1, 1968 was the date set by respondent court for trial of this matter. On its own motion the court set the 4th day of October, 1968 for designation of the judge who will hear the case.

XII

The persons now subject to this order, pursuant to the language contained in Appendix E, are the following:

1. A party to this action;
2. Any attorney connected with this case as defense counsel or as prosecutor;
3. Any other attorney associated with this case;
4. Any judicial attache or employee;
5. Any public official, including but not limited to any chief of police, or any sheriff;
6. Any agent, deputy, or employee or any such persons;
7. Any grand juror;
8. Any witness having appeared before the Grand Jury in this matter;
9. Any person subpoenaed to testify at the trial of this matter.

XIII

These enumerated persons are prohibited from doing the following:

Release or authorize the release for public dissemination:

1. Any purported extrajudicial statement of the defendant relating to this case;

2. Any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the court;

3. Any statement as to the existence or possible existence of any document, exhibit, or any other evidence, the admissibility of which may have to be determined by the court;

4. An opinion or any comment outside of court as to the weight, value or effect of any evidence as tending to establish guilt or innocence;

5. Any statement outside of court on the weight, value or effect of any testimony that has been given;

6. Any statement as to the identity of any prospective witness, or his probable testimony, or the effect thereof;

7. Any out-of-court statement as to the weight, value or effect of any purported evidence alleged to have been accumulated as a result of the investigation;

8. Any statement as to the content, nature, substance or effect of any testimony which may be given in any proceeding related to this matter.

XIV

The objective of the above-enumerated restrictions is succinctly expressed in the following quotation from the preamble to this order, as contained in Appendix E:

". . . it further appearing to the court that the dissemination by *any* means of public communication of any out-of-court statements *relating* to this case *may* interfere with constitutional right of the defendant to a fair trial and disrupt the proper administration of justice . . ." (Emphasis added.) (Appendix E.)

XV

The petitioner is, by virtue of the wording of the order, a person subject to the order and prohibited from doing those things set forth in paragraph XIII, *supra.*

XVI

The petitioner has information he believes the public is entitled to know, and which does not interfere with the constitutional right of the defendant to a fair trial or disrupt the proper administration of justice. Included among this information are facts pertinent to unfounded rumors relating to the claimed existence of witnesses or evidence purportedly affecting the prosecution of *People v. Sirhan Bishara Sirhan,* No. A-233421, but which, in fact, will not affect said prosecution.

XVII

By virtue of the "Order Re Publicity," the petitioner has been substantially hampered in making any disclosure whatsoever relating to the investigation and prosecution of *People v. Sirhan Bishara Sirhan,* No. A-233421.

XVIII

In issuing the "Order Re Publicity," as set forth in Appendix E, the respondent court acted illegally and in excess of its jurisdiction, since the order in its entirety violates the laws and constitutions of both the State of California and the United States.

XIX

As an alternative to paragraph XVIII, *supra*, it is alleged that in issuing the "Order Re Publicity," as set forth in Appendix E, the respondent court acted illegally and in excess of its jurisdiction in that portions of the order violate the laws and constitutions of both the State of California and the United States; and the portions which were in excess of the jurisdiction of the respondent court are not severable from the remainder of the order.

XX

As an alternative to paragraphs XVIII and XIX, *supra*, it is alleged that in issuing the "Order Re Publicity," as set forth in Appendix E, the respondent court acted illegally and in excess of its jurisdiction in that portions of the order violate the laws and constitutions of both the State of California and the United States; and that if these portions are severable from the remainder of the order, the petitioner is entitled to these severable portions.

XXI

Petitioner has a vital public interest in having the right and extent of public officials to make extrajudicial statements in criminal cases considered and determined by this court.

XXII

Petitioner has no plain, speedy or adequate remedy at law unless the order of the respondent court is annulled and vacated, either in whole or in part, and the respondent court is prohibited, either in whole or in part, from carrying out its threat to punish violations of the order by "swift action . . . for contempt." (See Appendix E, p. 2, line 5.)

CONCLUSION

WHEREFORE, petitioner prays that a peremptory writ of mandamus and prohibition issue out of this court, directed to the Superior Court, requiring it to annul, either in whole or in part, the order of June 7, 1968, as subsequently amended, and as now contained in Appendix E; and to refrain from carrying out, either in whole or in part, its threat to hold any person who violates siad order in contempt of court;

or, in the alternative, that the Superior Court appear before this court at a time and place to be fixed by this court to show cause why that court has not done so and why a peremprory writ should not issue; and that, in the meantime, the respondent court be commanded to vacate the present existing "Order Re Publicity" until further order of this court; and that petitioner have such other and further relief as is just and proper.

Respectfully submitted,

EVELLE J. YOUNGER
District Attorney of
Los Angeles County
Attorney in Propria Persona

VERIFICATION

The allegations in the foregoing petition for writ of mandate and prohibition are alleged as true under penalty of perjury by the undersigned public official, acting in the course and scope of his official capacity.

Dated this 10th day of September, 1968.

Executed at Los Angeles, California.

EVELLE J. YOUNGER
District Attorney of Los
Angeles County

Points and Authorities in Support of Petition for Writ of Mandate and Prohibition.

Court of Appeal of the State of California, Second Appellate District.

Evelle J. Younger, Petitioner, v. Superior Court of the State of California for the County of Los Angeles, Respondent, Sirhan Bishara Sirhan, Real Party in Interest. 2d Civ. No.

I

MANDATE AND PROHIBITION ARE PROPER AND APPROPRIATE REMEDIES IN THIS CASE

If, as is urged in subsequent portions of these Points and Authorities, the respondent court acted in excess of its jurisdiction and if the petitioner has no other plain, speedy and adequate remedy in the ordinary course of law (a matter which is discussed in part II of these Points and Authorities), mandate is a proper remedy for nullifying the "Order Re Publicity" of the respondent court to the extent that it has acted in excess of its jurisdiction, and prohibition is a proper remedy to prevent the respondent court from enforcing the order insofar as that court threatens to act in excess of its jurisdiction by the use of contempt. (See Rule 56 of the California Rules of Court and Code of Civil Procedure, Sections 1085, 1086, 1102 and 1103.)

Thus, in *County of Los Angeles v. Superior Court*, 253 Cal.App.2d 670, 675-676 (1967) it was held that prohibition would be a proper remedy to prohibit the issuance of a proposed preliminary injunction and the taking of any further proceedings in an action relating

to an attempt to preclude certain officials, including the District Attorney, from making extrajudicial statements to the public. Thus, this court clearly can prohibit the use of contempt upon which the respondent court intends to proceed in the event its "Order Re Publicity" is violated. (See Appendix E, p. 2, lines 4-6.) Furthermore, since in the present case, the actual order has been issued by the respondent court rather than stayed pending appellate proceedings, as was the case in *County of Los Angeles v. Superior Court, supra,* mandate must be issued to annul what has already taken place rather than prohibition being issued to prevent what was proposed to take place in *County of Los Angeles v. Superior Court, supra.*

II

THE PETITIONER HAS NO PLAIN, SPEEDY AND ADEQUATE REMEDY AT LAW.

The order from which relief is sought herein is similar to the injunction considered by the California Supreme Court in *In re Berry,* 68 A.C. 135 (1968). In that case, the persons affected by the injunction violated the injunction and thereby obtained appellate review. However, the Court noted that in violating the injunction the petitioners chose "the more perilous of the two courses open to them." (68 A.C. at 147.) Clearly, the petitioner herein could violate the order of the court and then seek appellate review from a judgment of contempt imposed by the respondent court for said violation. However, it would appear more appropriate, considering the office of the petitioner and the interests involved, for this matter to be tested by means of the present proceedings, similar to the manner in which the validity of an order suppressing publicity was tested in

County of Los Angeles v. Superior Court, supra. Yet unless this court holds a hearing in this matter, the only alternative available to petitioner, in order to test the validity from the order from which relief is sought, would be to violate the instant order. We respectfully request this court avoid any necessity for even considering such action by at least granting a hearing on this matter, in order that it may be processed in what may be considered the most orderly and lawful fashion, namely, "to comply with the order while seeking a judicial declaration as to its jurisdictional validity." (*In re Berry,* 68 A.C. at 146.)

III

PRELIMINARY STATEMENT

The order under examination presents more than the usual conflict between freedom of expression and fair trial. It totally ignores the dimension of legitimate public interest in governmental activity which is the raison d'etre of these constitutional rights.

Implicit in the constitutionally guaranteed freedoms of speech and press is the right of the public to be informed of all relevant facts of a major event. A defendant's fundamental right to a fair trial is not jeopardized by such disclosure.

Petitioner pursues the remedy hereby sought to advocate the paramount right of a fair disclosure of legitimate information to a properly interested and involved public. The existing "Order Re Publicity" emasculates this right.

The court may take judicial notice that the case of *People v. Sirhan* involves the violent death of a national political figure. The normal public interest en-

gendered by such an event is accentuated by the appalling fact that it is the third in a series of similar recent tragedies. It is obvious that this case will continue to receive the widest possible exposure through news media regardless of the existing "Order Re Publicity." It is to be expected that public surmise and conjecture will flourish in the absence of responsible information.

Petitioner respectfully contends that the circumstances attending the death of Senator Robert F. Kennedy present a classic example of legitimate public interest. An order precluding any significant official comment on these circumstances ignores that interest and is repugnant to the constitutional guarantees of free expression.

IV

THE PUBLIC HAS A RIGHT TO BE INFORMED AS TO THE PROCESS OF CRIMINAL CASES AND THE CONDUCT OF PUBLIC OFFICIALS

The importance and scope of the right of the public to be informed is clearly reflected in the following language of the California Supreme Court:

> ". . . the greatest publicity to the acts of those holding positions of public trust, and the greatest freedom in the discussion of the proceedings of public tribunals . . . are regarded as essential to the public welfare. . . .
>
> ". . . the public have the right to know and discuss all judicial proceedings, unless such right is expressly interdicted by constitutional or statutory provisions, or unless the publication prohibited by

the order of the court is of such a nature as to obstruct or embarrass the court in its administration of the law and the execution of the powers expressly conferred upon it." (*In re Shortridge*, 99 Cal. 526, 530-531 [1893].)

In *Wood v. Georgia*, 370 U.S. 375 (1962) the Court specifically stated that out-of-court publications regarding judicial proceedings are protected by the constitutional guarantee of freedom of speech and press, and these rights can only be impaired if there is an extremely high degree of imminence of an extremely serious evil and there is no doubt that the utterances in question constitute an imminent and not merely a likely threat to the administration of justice.

The Court observed that the fact that petitioner was a sheriff did not curtail his right of free speech and further observed that:

"The role that elected officials play in our society makes it all the more imperative that they are allowed freely to express themselves on matters of current public importance." (*Wood v. Georgia, supra*, at 395.)

". . . a broad conception of the First Amendment is necessary 'to supply the public need for information and education with respect to the significant issues of the times. . . .'" (*Wood v. Georgia, supra*, at 388.)

As stated in *Sheppard v. Maxwell*, 384 U.S. 333 (1965):

"A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. . . . The

press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism." (384 U.S. 333 at 350.)

If it be conceded that there is a legitimate public interest in the conduct of criminal law enforcement, it is difficult to conceive of an occasion more likely to arouse such interest than the instant case.

We are not here concerned with a philandering medical practitioner or the possible existence of a one-armed bushy-haired stranger. We are concerned with the death of a national political figure and its possible national and international political implications.

V

THE "ORDER RE PUBLICITY" VIOLATES THE CONSTITUTIONAL GUARANTEE OF FREE SPEECH AND INDIRECTLY VIOLATES THE CONSTITUTIONAL GUARANTEE OF FREEDOM OF THE PRESS

The persons subject to this order are enumerated as follows:

1. A party to this action;
2. Any attorney connected with this case as defense counsel or as prosecutor;
3. Any other attorney associated with this case;
4. Any judicial attache or employee;
5. Any public official, including but not limited to any chief of police, or any sheriff;
6. Any agent, deputy, or employee or any such persons;
7. Any grand juror;

8. Any witness having appeared before the Grand Jury in this matter;

9. Any person subpoenaed to testify at the trial of this matter.

These enumerated persons are prohibited from doing the following:

Release or authorize the release for public dissemination:

1. Any purported extrajudicial statement of the defendant relating to this case;

2. Any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the court;

3. Any statement as to the existence or possible existence of any document, exhibit, or any other evidence, the admissibility of which may have to be determined by the court;

4. An opinion or any comment outside of court as to the weight, value or effect of any evidence as tending to establish guilt or innocence;

5. Any statement outside of court on the weight, value or effect of any testimony that has been given;

6. Any statement as to the identity of any prospective witness, or his probable testimony, or the effect thereof;

7. Any out-of-court statements as to the weight, value or effect of any purported evidence alleged to have been accumulated as a result of the investigation;

8. Any statement as to the content, nature, substance or effect of any testimony which may be given in any proceeding related to this matter.

The objective of the above-enumerated restrictions is succinctly expressed in the following quotation from the preamble to this order:

> ". . . it further appearing to the Court that the dissemination by *any* means of public communication of any out-of-court statements *relating* to this case *may* interfere with the Constitutional right of the defendant to a fair trial and disrupt the proper administration of justice . . ." (Emphasis added.) (Order Re Publicity, June 7, 1968, pp. 1-2.)

That such an order indirectly violates the constitutional guarantee of freedom of the press cannot be questioned. The framers of the Constitution recognized a special status of the press in the First Amendment only to secure to the people the special benefits of being informed. The press is but a conduit through which information flows to the public. It makes no difference at which end the conduit is blocked. If information is denied to the press, the public remains uninformed just as certainly as if the press had the information but was denied the right to publish it.

Fairly interpreted the provisions of the order under attack herein preclude comment by any informed official source respecting the existence or non-existence of any evidence which might conceivably arise in the investigation and trial of this case without regard to the remoteness of such eventuality. Implicit in this order is the assumption that any comment must deprive a defendant of due process of law. The conduit is effectively severed; the constitutional provisions of freedom of expression voided.

The vice of the "Order Re Publicity" is that it wholly ignores the judicial precedent of effectuating a balance between the constitutional guarantees of free speech and fair trial. In determining what restraint on freedom of speech and press are reasonable, the courts have firmly established the "clear and present danger" test.

This "clear and present danger" rule was first set forth by the United States Supreme Court in *Bridges v. California,* 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192 (1941). Under the holding of the *Bridges* case, in order to sustain a constructive contempt, the words must be used in such circumstances and must be of such a nature as to create a clear and present danger that they will bring about a substantive evil. This evil must be extremely serious and the degree of imminence extremely high before the utterance can be punished.

First Amendment rights may not be "sacrificed merely because some evil may result."[1] There must be "no doubt that the utterances in question are a serious and imminent threat to the administration of justice."[2] The danger "must not be remote or even probable; it must immediately imperil."[3]

It is irrelevant to marshal the generalizations of decided cases without discussing their application to the instant case. It is not enough to recognize that Senator

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[1]Dissenting Opinion per Douglas, *United States v. International Union United Auto. A. and A.I.W.,* 352 U.S. 567, 596; 1 L.Ed. 2d 563, 581 (1957).

[2]*Craig v. Harney,* 331 U.S. 367, 373; 91 L.Ed. 1546, 1551 (1947).

[3]*Craig v. Harney, supra,* at 1552.

Robert F. Kennedy was a prominent national figure and that his death under any circumstances would receive extensive publicity. The court is aware that Senator Kennedy was a candidate for presidential nomination and that his death occurred in a crowded public place virtually under the eyes of television cameras. Massive publicity was inevitable. This mere fact of inevitable publicity immediately attending upon the event of the Senator's death is the sole justification relied upon for the issuance of the "Order Re Publicity" three days later. Under the circumstances of this case mere publicity, of whatever magnitude, is not a substitute for the judicial standard of the "clear and present danger" test.

Satisfaction of the "clear and present danger" test invariably requires a plainfully precise consideration of the particular circumstances under which the speech is uttered. The court "cannot escape the exercise of judgment on the particular circumstances of the particular case"[4] and must turn "to the particular utterances . . . and the circumstances of their publication . . ."[5] The factual record before the court must be analyzed to determine whether it discloses by competent evidence "an actual interference with" the fair conduct of trials.[6] Because of this requirement that each case be decided on its own facts:

> "Broad prophylactic rules in the area of free expression are suspect. [Citations]

---

[4]Frankfurter, concurring in *Pennekamp v. Florida*, 328 U.S. 331, 367; 90 L.Ed. 1295, 1314 (1946).

[5]*Bridges v. California, supra*, at 207-208.

[6]*Wood v. Georgia, supra*, at 393.

> Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." (*N.A.A.C.P. v. Button,* 371 U.S. 415, 438; 9 L.Ed.2d 405, 421 [1963].)

The existing order is invalid in that it substitutes the vagueness of mere possibility for the reasonable probability of prejudice envisioned by the "clear and present danger" test. It is axiomatic that a court exceeds its jurisdiction when it attempts to enjoin conduct beyond its power to enforce obedience.

VI

THE "ORDER RE PUBLICITY" IS IN EXCESS OF THE JURISDICTION OF RESPONDENT COURT

In a proper case, *and for reasonable cause shown,* a court has jurisdiction to issue a restrictive order addressed to the parties litigant and attorneys before the court. The inclusion of law enforcement, governmental agencies, witnesses and potential witnesses having access to information relative to the proceedings exceeds the court's jurisdiction.

In commenting on the landmark decision of *Sheppard v. Maxwell, supra,* the Court of Appeal in *County of Los Angeles v. Superior Court,* 253 Cal.App.2d 670 (1967) held as follows:

> 'The opinion in Sheppard shows that the court does no more than urge control of prejudicial pretrial publicity by the adoption and enforcement of appropriate rules and regulations. Thus, the court suggested that the making of statements by any attorney appearing in a criminal case should be prohibited by appropriate rules of court governing the professional conduct of attorneys, as

was done in *State v. Van Duyne*, 43 N.J. 369, 389 [204 A.2d 841, 850, 11 A.L.R.3d 1086], by its interpretation of Canon 20 of the American Bar Association Canons of Professional Ethics. At the same time the court recognized that the courts have no direct control over the dissemination of potentially prejudicial information by law enforcement officers and said that such control should be exercised by the appropriate city and county officials." (253 Cal.App.2d 670 at 686-687.)

If there exists a substantial doubt as to the jurisdiction of a court to restrain the utterances of other agencies of government, there can be no rational justification for an order purporting to restrain the public utterances of individuals distantly connected wth the proceedings. Assuming, arguendo, the propriety of an order restraining publicity directed to law enforcement agencies, the court must recognize that persons not specifically mentioned in the order, or persons unaware of the provisions of the order, may from time to time divulge or suggest to various news media the existence or purported existence of certain witnesses or evidence purportedly affecting the investigation of the instant matter. The court should further recognize that investigation on the part of duly authorized law enforcement agencies may discredit the claimed existence of such witnesses or evidence. In such event, it is respectfully submitted that in the public interest the said law enforcement agencies should be permitted to reveal to the various news media the fact of such investigation and the evaluation thereof.

The court's attention is respectfully addressed to that portion of the order that prohibits "any out-of-

court statement as to the weight, value or effect of any purported evidence alleged to have been accumulated as a result of the investigation." (Order Re Publicity, June 7, 1968, p. 2.) Accepting the heretofore advanced premise of legitimate public interest as distinguished from morbid curiosity, national interest requires definitive answers to specific legitimate inquiry. If irresponsible sources suggest through the news media the existence of a national or international conspiracy, is the public interest or the defendant's right to a fair trial benefitted by the official declaration, "no comment" when investigation by responsible law enforcement has thoroughly discredited the purported claim? It is submitted that any different answer is precluded by the above-quoted language on penalty of contempt of court if this order be considered valid. It is unwise and unjustified to assume, as does the respondent court, that law enforcement officials entrusted with the investigation and process of this case will issue statements prejudicial to the defendant's right to a fair trial. Law enforcement shares the public concern for speedy and unequivocal justice.

The record in this case is devoid of any suggestion that law enforcement had released (or contemplated the release) for public dissemination of any information or comment inconsistent with this concern.

That respondent court has arbitrarily categorized any public utterance of an informative nature as prejudicial to the defendant is further demonstrated by the language prohibiting "*any* statement as to the content, nature, substance or effect of *any* testimony which *may* be given in *any* proceeding related to this matter." (Emphasis added.) (Order Re Publicity, June 7, 1968,

p. 3.) A simple example will suffice to illustrate the breadth of this prohibition:

Although the headliness of the world's press have announced the shooting of Senator Kennedy at the Ambassador Hotel and the contemporaneous arrest of the defendant, law enforcement is precluded from announcing that there is any evidenciary basis for these revelations. To recognize a "clear and present danger" to a defendant's right to a fair trial in such innocuous confirmation of the headlines is intellectual dishonesty.

It must be borne in mind that the order which petitioner seeks to vacate in this case will inevitably establish a precedent for the guidance of other courts in other cases. It is unlikely that the circumstances of these other events will be as saturated with instant publicity as the present case. The issue of principle involved is not dependent upon what the public may already know in this case, but upon what the public has a right to know in any case. Acquiescence in this order by petitioner is tantamount to an admission that in no case which may hereafter arise can the District Attorney of this County release to the press the fact that a citizen was shot in a hotel of this City. If such an announcement violates the 6th Amendment in this case, it violates the 6th Amendment in all cases. The constitutional guarantee of free speech is surrendered upon judicial sanction of this order.

A literal interpretation of the "Order Re Publicity" would have precluded the District Attorney of Los Angeles County from announcing on June 8, 1968 that Senator Kennedy died of gunshot wounds, as this would surely be a statement "as to the content, nature, substance or effect" of testimony to be elicited before

the Grand Jury. It is recognized that a violation of this nature might well be ignored by respondent court as being beyond the scope of its intention at the time the order was drafted. Perhaps any number of innocuous utterances relating to the case would be similarly considered. But under this order any person who would make a public disclosure significantly related to the process of this case does so at his peril. The all pervasive risk of contempt effectively stifles freedom of speech.

VII

THE "ORDER RE PUBLICITY" OF JUNE 7, 1968 IS VIOLATIVE OF SOUND PUBLIC POLICY

Independent of the constitutional issue, a grave question of policy must be resolved as to the ultimate wisdom of any order seeking to inhibit free expression in any area of constitutional protection. A non-critical acceptance of the concept that judicial imposition of prior restraints on freedom of expression is necessary in all criminal cases ignores strong precedent, persuasive authority and sound public policy.

Article I, Section 9, California Constitution, unequivocally provides that:

> "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

The breadth and effect of this language was discussed by the Supreme Court of this State in *Dailey v.*

Superior Court of San Francisco, 112 Cal. 94 at 94 (1896).

> "The right of the citizen to freely speak, write, and publish his sentiments is unlimited, but he is responsible at the hands of the law for an abuse of that right. He shall have no censor over him to whom he must apply for permission to speak. . . . It is patent that this right to speak, write, and publish, cannot be abused until it is exercised, and before it is exercised there can be no responsibility. The purpose of this provision of the constitution was the abolishment of censorship, and for courts to act as censors is directly violative of that purpose. . . ." (112 Cal. 94 at 97.)

The latest and best expression of public policy in this field is found and discussed in the recent case of *County of Los Angeles v. Superior Court, supra,* at 689-690:

> "As usual, says the Medina Committee 'there is, on the one hand, the question of power or jurisdiction and, on the other hand, the question of policy. Moreover, one cannot consider the two questions *in vacuo*. They must be discussed in relation to the groups of persons who would be affected by the control of prejudicial publicity. Thus, starting with the commission of the crime or the arrest of the accused or the filing of the indictment or information and continuing up to the time of the commencement of the trial or thereabouts, it is a serious question, both of power and of policy, whether the court in which the case is to be tried, or any court, should, by rule of court, by authority of legislative enactment, or by virtue of some competence supposed to be inherent in the

judicial function, have the right, vis-a-vis lawyers, members of the police force, or representatives of the press, to proscribe the publication or utterance of matter deemed prejudicial to the right of the accused to a fair trial. If such right exists, either actually or *in ovo,* then the judges, in this pretrial period, must have the power to fine and imprison as for contempt of court all lawyers, members of the police force, and representatives of the press who violate the orders or rules of proscription. The prospect, in this pretrial period, of judges of various criminal courts of high and low degree sitting as petty tyrants, handing down sentences of fine and imprisonment for contempt of court against lawyers, policemen, and reporters and editors, is not attractive. Such an innovation might well cut prejudicial publicity to a minimum. But at what a price!

"Initially a distinction must be drawn within the word 'pretrial' between the purely investigatory stage before any judicial proceeding has been instituted and the second stage which begins when the defendant is brought before a commissioner or magistrate or when a grand jury proceeding has commenced. The Committee is firmly of the opinion that the courts lack any power whatsoever over the police or the news media during the first stage of the pretrial period, except the ever-present power to control activities in and around the courthouse.

"During the second stage, the authority of the court increased to encompass those judicial or quasi-judicial proceedings. . . . Nevertheless, with

respect to the police and the press in the entire pretrial period we think it unwise and detrimental to the public interest to give such contempt powers to the courts and the judges. Moreover, we think that such proceedings and the court rules, legislation or what not else authorizing such contempt proceedings might well be held to be a violation of the First Amendment guarantees of free press and free speech. Furthermore, as to the police, we find no authority inherent in the courts or the judges to discipline them for alleged breach of their duties as police officers.' (Medina Report, pp. 39-40.)"

County of Los Angeles v. Superior Court, supra, suggests that which petitioner now contends: that the guardians of a defendant's right to a fair trial have over-reacted in applying the lessons of *Estes v. Texas,* 381 U.S. 532 (1965) and *Sheppard v. Maxwell, supra.* The order which petitioner here attacks is a prime example of over-reaction due to erroneous interpretation of the mandate of our highest Court. This argument finds support in the following excerpts from a speech delivered by Judge George Edwards, United States Court of Appeals, Sixth Circuit, to the Connecticut Council on Crime and Delinquency Forum on "Free Press and Law Enforcement," at Hartford, Connecticut on September 21, 1966:

"The most dangerous threat to the American ideal of free speech and press since the days of Joe McCarthy may well be the recommendations now pending before the American Bar Association Special Committee on Minimum Standards for Criminal Justice.

* * *

"Some part of my concern with this problem is that the current moves are defended as having been caused by judicial views about press abuse in the Sheppard case. Since I wrote (in dissent) in my court for a new trial for Dr. Sheppard, I feel some responsibility to point out that no judge who participated in review of that case advocated the strictures which are currently being contemplated.

"Justice Clark's opinion for the United States Supreme Court did *not* rule that Dr. Sheppard was denied due process because of pretrial publicity. His opinion did *not* suggest secret court hearings in criminal matters. His opinion did *not* call for sanctions against a free press. His opinion did *not* suggest silencing lawyers for months or years prior to a criminal trial."

The Supreme Court discussed numerous examples of misconduct giving rise, in the aggregate, to a violation of due process. The Court did not isolate pretrial publicity as an independently sufficient evil, but, on the contrary declared:

"While we cannot say that *Sheppard* was denied due process by the Judge's refusal to take precautions gainst the influence of pretrial publicity alone, the Court's later rulings must be considered against the setting in which the trial was held." (*Sheppard v. Maxwell, supra,* at 354.)

The Supreme Court specified certain safeguards which the *Sheppard* trial court might have imposed when confronted with the dangers apparent under the circumstances of that case:

"More specifically, the trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters, such as refusal of Sheppard to submit to interrogation or take any lie detector tests; any statement made by Sheppard to officials; the identity of prospective witnesses or their probable testimony; any belief in guilt or innocence; or like statements concerning the merits of the case. [Citations]." (*Sheppard v. Maxwell, supra,* at 361.)

It is submitted that the Court did not say that the imposition of such restrictions was desirable in all other criminal cases or that judicial sanction of such restrictions would be forthcoming in the absence of the "clear and present danger" apparent in *Sheppard.* The *Sheppard* case does not authorize the imposition of blanket restrictions at the very outset of a criminal proceeding. A condition precedent to the employment of drastic remedies is demonstrable evidence of an impending violation of the defendant's rights. Publicity *per se* is not sufficient.

CONCLUSION

Petitioner submits that never before in the history of American judicial relations with the public has the voice of responsible law enforcement been more effectively muted than in this case.

The question posed by petitioner for consideration by this court is whether that voice shall be heard at all.

Respectfully submitted,
EVELLE J. YOUNGER
District Attorney of Los Angeles County
Attorney in Propria Persona

APPENDIX A.

Order Re Publicity.

Superior Court of the State of California, for the County of Los Angeles.

People of the State of California, Plaintiffs, vs. Sirhan Bishara Sirhan, Defendant. No. A 233421.

The Grand Jury having returned an indictment in this matter on this date, June 7, 1968, this Court now has jurisdiction over all proceedings in this case for the first time. Therefore, the Court is now in a legal position to make certain orders respecting this matter.

Under our Constitution, each defendant is entitled to the due process of the law and to a fair trial. This Court has an affirmative duty to do everything possible within its Constitutional powers and jurisdiction to make certain that each defendant does receive a fair trial.

In order to fulfill that Constitutional duty to guarantee that the defendant does receive a fair trial, and because of the obvious public interest in this matter which has produced massive news media publicity, and it further appearing to the Court that the dissemination by any means of public communication of any out-of-court statements relating to this case may interfere with the Constitutional right of the defendant to a fair trial and disrupt the proper administration of justice, the Court, on its own motion, will now issue the following orders, a violation of which will result in swift action to punish for contempt any offender within the jurisdiction of this Court.

It is the order of this Court that no party to this action, nor any attorney connected with this case as

defense counsel or as prosecutor, nor any other attorney, nor any judicial officer or employee, nor any public official, including but not limited to any chief of police, nor any sheriff, nor any agent, deputy, or employee of any such persons nor any grand juror, nor any witness having appeared before the Grand Jury in this matter, nor any person subpoenaed to testify at the trial of this matter, shall release or authorize the release for public dissemination of any purported extrajudicial statement of the defendant relating to this case, nor shall any such persons release or authorize the release of any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the Court, nor shall any such person make any statement for public dissemination as to the existence or possible existence of any document, exhibit, or any other evidence, the admissibility of which may have to be determined by the Court. Nor shall any such persons express outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence. Nor shall any such persons make any statement outside of court as to the nature, substance, or effect of any testimony that has been given. Nor shall any such persons issue any statement as to the identity of any prospective witness, or his probable testimony, or the effect thereof. Nor shall any person make any out-of-court statement as to the nature, source, or effect of any purported evidence alleged to have been accumulated as a result of the investigation of this matter. Nor shall any such person or any witness, whether or not under subpoena, make any statement as to the content, nature, substance, or effect of any

testimony which may be given in any proceeding related to this matter, except that a witness may discuss any matter with any attorney of record or agent thereof.

This order does not include any of the following:

1. Factual statements of the accused person's name, age, residence, occupation, and family status.

2. The circumstances of the arrest, namely, the time and place of the arrest, the identity of the arresting and investigating officers and agencies, and the length of the investigation.

3. The nature, substance, and text of the charge, including a brief description of the offenses charged.

4. Quotations from, or any reference without comment to, public records of the Court in the case, or to other public records or communications heretofore disseminated to the public.

5. The scheduling and result of any stage of the judicial proceeding held in open court in an open or public session.

6. A request for assistance in obtaining evidence.

7. Any information as to any person not in custody who is sought as a possible suspect or witness, nor any statement aimed at warning the public of any possible danger as to such person not in custody.

8. A request for assistance in the obtaining of evidence or the names of possible witnesses.

Further, this order is not intended to preclude any witness from discussing any matter in connection with the case with any of the attorneys representing the de-

fendant or the People, or any representative of such attorneys.

It is further ordered that a copy of this order be attached to any subpoena served on any witness in this matter, and that the return of service of the subpoena shall also include the fact of service of a copy of this order.

This order shall be in force until this matter has been disposed of or until further order of Court.

Dated: June 7, 1968

/s/ ARTHUR L. ALARCON
Arthur L. Alarcon
Judge of the Superior Court

APPENDIX B.

Notice of Motion to Vacate or Modify Order of June 7, 1968 Re Publicity.

Superior Court of the State of California, for the County of Los Angeles.

People of the State of California, Plaintiff, v. Sirham Bishara Sirhan, Defendant. No. A-233421.

TO: THE SUPERIOR COURT OF LOS ANGELES COUNTY, DEPARTMENT 100, JUDGE RICHARD SCHAUER, PRESIDING, AND TO RUSSELL PARSONS, ATTORNEY FOR THE ABOVE-NAMED DEFENDANT:

Please take notice that on July 26, 1968, or as soon thereafter as the matter may be heard, in Department 100 of the Superior Court of Los Angeles County, the District Attorney of Los Angeles County will move the court to vacate or modify that certain order of June 7, 1968, entitled "Order Re Publicity" issued in the above-entitled matter.

This motion will be based on the premise that the existing order is unduly restrictive of fair comment by law enforcement agencies entrusted with the duty of investigating and prosecuting the above-entitled case in certain areas which are of legitimate public interest and concern.

Respectfully submitted,
EVELLE J. YOUNGER
District Attorney of Los Angeles County
By LYNN D. COMPTON
Lynn D. Compton
Chief Deputy District Attorney

APPENDIX C.

Order Re Publicity.

Superior Court of the State of California, for the County of Los Angeles.

People of the State of California, Plaintiff, v. Sirhan Bishara Sirhan, Defendant. No. A 233421.

The Grand Jury having returned an indictment in this matter on this date, June 7, 1968, this court now has jurisdiction over all proceedings in this case for the first time. Therefore, the court is now in a legal position to make certain orders respecting this matter.

Under our Constitution, each defendant is entitled to the due process of the law and to a fair trial. This court has an affirmative duty to do everything possible within its constitutional powers and jurisdiction to make certain that each defendant does receive a fair trial.

In order to fulfill that constitutional duty to guarantee that the defendant does receive a fair trial, and because of the obvious public interest in this matter which has produced massive news media publicity, and it further appearing to the court that the dissemination by any means of public communication of any out-of-court statements relating to this case may interfere with the constitutional right of the defendant to a fair trial and disrupt the proper administration of justice, the court, on its own motion, will now issue the following orders, a violation of which will result in swift action to punish for contempt any offender within the jurisdiction of this court.

It is the order of this court that no party to this action nor any attorney connected with this case as

defense counsel or as prosecutor, nor any other attorney associated with this case, nor any judicial attache or employee, nor any public official, including but not limited to say chief of police, nor any sheriff, nor any agent, deputy, or employee of any such persons nor any grand juror, nor any witness having appeared before the Grand Jury in this matter, nor any person subpoenaed to testify at the trial of this matter, shall release or authorize the release for public dissemination of any purported extrajudicial statement of the defendant relating to this case, nor shall any such persons release or authorize the release of any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the court, nor shall any such person make any statement for public dissemination as to the existence or possible existence of any document, exhibit, or any other evidence, the admissibility of which may have to be determined by the court. Nor shall any such persons express outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence. Nor shall any such persons make any statement outside of court for public dissemination as to the weight and value or effect of any testimony that has been given. Nor shall any such persons issue any statement for public dissemination as to the identity of any prospective witness, or his probable testimony, or the effect thereof. Nor shall any such person make any out-of-court statement for public dissemination as to the weight, value, or effect of any purported evidence alleged to have been accumulated as a result of the investigation of this matter. Nor shall any such person make any statement for public dissemination as to the content, na-

ture, substance, or effect of any testimony which may be given in any proceeding related to this matter, except that a witness may discuss any matter with any attorney of record or agent thereof.

This order does not include any of the following:

1. Factual statements of the accused person's name, age, residence, occupation, and family status.

2. The circumstances of the arrest, namely, the time and place of the arrest, the identity of the arresting and investigating officers and agencies, and the length of the investigation.

3. The nature, substance, and text of the charge, including a brief description of the offenses charged.

4. Quotations from, or any reference without comment to, public records of the court in the case, or to other public records or communications heretofore disseminated to the public.

5. The scheduling and result of any stage of the judicial proceeding held in open court in an open or public session.

6. A request for assistance in obtaining evidence.

7. Any information as to any person not in custody who is sought as a possible suspect or witness, nor any statement aimed at warning the public of any possible danger as to such person not in custody.

8. A request for assistance in the obtaining of evidence or the names of possible witnesses.

Further, this order is not intended to preclude any witness from discussing any matter in connection with the case with any of the attorneys representing the de-

fendant or the People, or any representative of such attorneys.

It is further ordered that a copy of this order be attached to any subpoena served on any witness in this matter, and that the return of service of the subpoena shall also include the fact of service of a copy of this order.

This order shall be in force until this matter has been disposed of or until further order of court.

Dated: June 7, 1968.

/s/ ARTHUR L. ALARCON
Arthur L. Alarcon
Judge of the Superior Court

APPENDIX D.

Argument and Points and Authorities in Support of Motion to Vacate or Modify Order of June 7, 1968 Re Publicity.

Superior Court of the State of California, for the County of Los Angeles.

People of the State of California, Plaintiff, v. Sirhan Bishara Sirhan, Defendant. No. A-233421.

I
PRELIMINARY STATEMENT

The order under examination presents more than the usual conflict of free speech and free press versus fair trial. It ignores the often overlooked basis of these rights; the dimension of legitimate public interest in governmental activity.

Implicit in the constitutionally guaranteed freedoms of speech and press is the right of the public to be informed of all relevant facts of a major event. A defendant's fundamental right to a fair trial is not jeopardized by such disclosure.

The prosecution initiates and pursues this argument not to detract from such a fair trial, but to advocate the important and perhaps paramount right of fair disclosure of legitimate information to a properly interested and involved public.

The right of free speech is not an end but a means; the right of a free press not a means nor end but a necessity; and both are vital and viable and equally inseparable to the public interest, which is, and must remain, the cornerstone of constitutional guarantees essential to our selective and elective form of government.

The importance and scope of this right of public disclosure is clearly reflected in the following language of the California Supreme Court:

> ". . . the greatest publicity to the acts of those holding positions of public trust and the greatest freedom in the discussion of proceedings of public tribunals . . . are regarded as essential to the public welfare. . . . The public have the right to know and discuss all judicial proceedings, unless such right is expressly interdicted by constitutional or statutory provisions, or unless the publication prohibited by the order of the court is of such a nature as to obstruct or embarrass the court in its administration of the law and the execution of the powers expressly conferred upon it." (*In re Shortridge* [1893] 99 Cal. 526, 530-531.)

II

THE ORDER OF JUNE 7, 1968, IN RE PUBLICITY IS IN VIOLATION OF THE CONSTITUTIONAL GUARANTEE OF FREE SPEECH AND INDIRECTLY VIOLATIVE OF THE CONSTITUTIONAL GUARANTEE OF THE FREEDOM OF PRESS

The persons subject to this order are enumerated as follows:

(1) A party to this action,

(2) Any attorney connected with this case as defense counsel or as prosecutor,

(3) Any other attorney associated with this case,

(4) Any judicial attache or employee,

(5) Any public official, including but not limited to any chief of police, or any sheriff;

(6) Any agent, deputy, or employee or any such persons,

(7) Any grand juror,

(8) Any witness having appeared before the Grand Jury in this matter,

(9) Any person subpoenaed to testify at the trial of this matter.

These enumerated groups are prohibited from doing the following:

Release or authorize the release for public dissemination:

Release or authorize the release for public dissemination:

(1) Any purported extrajudicial statement of the defendant relating to this case,

(2) Any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the court,

(3) Any statement as to the existence or possible existence of any document, exhibit, or any other evidence, the admissibility of which may have to be determined by the court,

(4) An opinion or any comment outside of court as to the weight, value or effect of any evidence as tending to establish guilt or innocence,

(5) Any statement outside of court on the weight, value or effect of any testimony that has been given,

(6) Any statement as to the identity of any prospective witness, or his probable testimony, or the effect thereof,

(7) Any out-of-court statement as to the weight, value or effect of any purported evidence al-

leged to have been accumulated as a result of the investigation,

(8) Any statement as to the content, nature, substance or effect of any testimony which may be given in any proceeding related to this matter.

The objective of the above enumerated restrictions as succinctly expressed in the following quotation from the preamble to this order:

> ". . . it further appearing to the court that the dissemination by *any* means of public communication of any out-of-court statements *relating* to this case *may* interfere with constitutional right of the defendant to a fair trial and disrupt the proper administration of justice . . ." (Emphasis added.)

Fairly interpreted, the above provisions of the existing order appear to preclude comment by any informed official source respecting the existence or non-existence of any evidence which might conceivably arise in trial without regard to the remoteness of such eventuality. Implicit in this order is the assumption that any comment must be prejudicial.

The vice of the above order is that it wholly ignores the judicial history and precedent of effectuating a balance between the constitutional guarantees of free speech and fair trial. In determining what restraint on freedom of speech and press are reasonable under specific circumstances, the courts have firmly established the "clear and present danger" test.

This "clear and present danger" rule was first set forth by the United States Supreme Court in *Bridges v. California* (1941) 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192. Under the holding of the *Bridges* case, in order to sustain a constructive contempt, the words

must be used in such circumstances and must be of such a nature as to create a clear and present danger that they will bring about a substantive evil. This evil must be extremely serious and the degree of imminence extremely high before the utterances can be punished.

The *Bridges* case also holds that a public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a judicial proceeding still pending in the courts upon the theory that in such case it must necessarily tend to obstruct the orderly and fair administration of justice.

Other cases in which the clear and present danger rule was followed by the United States Supreme Court include:

Wood v. Georgia (1962) 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569;

Pennekamp v. Florida (1946) 328 U.S. 331, 90 L.Ed. 1295;

Craig v. Harney (1947) 331 U.S. 367, 67 S.Ct. 1249, 91 L.Ed. 1546; and

Thomas v. Collins (1945) 323 U.S. 516, 89 L.Ed. 430.

In *Wood v. Georgia, supra,* the court specifically stated that out-of-court publications regarding judicial proceedings are protected by the constitutional guarantee of freedom of speech and press, and these rights can only be impaired if there is an extremely high degree of imminence of an extremely serious evil and there is no doubt that the utterances in question constitute an imminent and not merely a likely threat to the administration of justice.

A court, in balancing interests of such magnitude as free speech and free press, cannot act arbitrarily or capriciously. Under the specific circumstances of any particular case, a court must have real and substantial reasons to justify any abridgment of constitutional guarantees. Absent a clear and present danger to a fair trial of a defendant, a court is without jurisdiction to effectuate any order restrictive of free speech or press. Assuming the reasonable probability of prejudice to a defendant, the court has jurisdiction as well as responsibility to promulgate necessary restrictive orders. In such a case, the court is still required to balance all constitutional guarantees on the fulcrum of legitimate public interest.

The existing order is invalid in that it substitutes the vagueness of mere possibility for the reasonable probability of prejudice envisioned by the "clear and present danger" test. It is axiomatic that a court exceeds its jurisdiction when it attempts to enjoin conduct beyond its power to enforce obedience.

III

THE ORDER OF JUNE 7, 1968, IN RE PUBLICITY IS VIOLATIVE OF SOUND PUBLIC POLICY

Independent of the constitutional issue, a grave question of policy must be resolved as to the ultimate wisdom of any order seeking to inhibit free expression in any area of constitutional protection. Immediate acceptance of the Reardon Report philosophy ignores strong precedent and persuasive authority.

Article I, Section 9, California Constitution unequivocally provides that:

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press . . ."

In *Wood v. Georgia, supra,* the Court observed:

". . . the role that elected officials play in our society make it all the more imperative that they are allowed to freely express themselves on matters of current public importance. ". . . A broad conception of the First Amendment is necessary 'to supply the public need for information and education with respect to the significant issues of the times.' "

As stated in *Sheppard v. Maxwell* (1966) 384 U.S. 333, 86 S.Ct. 1507:

"A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. . . The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism."

The best expression of public policy in this field is found and discussed in the recent case of the *County of Los Angeles v. Superior Court of the State of California for the County of Los Angeles* (1967) 62 Cal.Rptr. 435 at p. 448:

"As usual, says the Medina Committee 'there is, on the one hand, the question of power or jurisdiction and, on the other hand, the question of

policy. Moreover, one cannot consider the two questions *in vacuo*. They must be discussed in relation to the groups of persons who would be affected by the control of prejudicial publicity. Thus, starting with the commission of the crime or the arrest of the accused or the filing of the indictment or information and continuing up to the time of the commencement of the trial or thereabouts, it is a serious question, both of power and of policy, whether the court in which the case is to be tried, or any court, should, by rule of court, by authority of legislative enactment, or by virtue of some competence supposed to be inherent in the judicial function, have the right, vis-a-vis lawyers, members of the police force, or representatives of the press, to proscribe the publication or utterance of matter deemed prejudicial to the right of the accused to a fair trial. If such right exists, either actually or *in ovo*, then the judges, in this pretrial period, must have the power to fine and imprison as for contempt of court all lawyers, members of the police force, and representatives of the press who violate the orders or rule of proscription. The prospect, in this pretrial period, of judges of various criminal courts of high and low degree sitting as petty tyrants, handing down sentences of fine and imprisonment for contempt of court against lawyers, policemen, and reporters and editors, is not attractive. Such an innovation might well cut prejudicial publicity to a minimum. But at what a price!

"Initially a distinction must be drawn within the word 'pretrial' between the purely investigatory

stage before any judicial proceeding has been instituted and the second stage which begins when the defendant is brought before a commissioner or magistrate or when a grand jury proceeding has commenced. The Committee is firmly of the opinion that the courts lack any power whatsoever over the police or the news media during the first stage of the pretrial period, except to ever-present power to control activities in and around the courthouse.

"During the second stage, the authority of the court increased to encompass those judicial or quasi-judicial proceedings. . . . Nevertheless, with respect to the police and the press in the entire pretrial period we think it unwise and detrimental to the public interest to give such contempt powers to the courts and the judges. Moreover, we think that such proceedings and the court rules, legislation or what not else authorizing such contempt proceedings might well be held to be a violation of the First Amendment guarantees of free press and free speech. Furthermore, as to the police, we find no authority inherent in the courts or the judges to discipline them for alleged breach of their duties as police officers.' (Medina Report, pp. 39-40.)"

IV

IN LIEU OF ABSOLUTE REVOCATION THE COURT SHOULD MODIFY THE EXISTING ORDER

In a proper case and for reasonable cause shown, a court has jurisdiction to issue a restrictive order addressed to the parties litigant and attorneys before the court. The inclusion of law enforcement and other

governmental agencies having access to information relative to the proceedings exceeds the court's jurisdiction.

In commenting on the landmark decision of *Sheppard v. Maxwell, supra,* the District Court of Appeal in *County of Los Angeles v. Superior Court of the State of California for the County of Los Angeles, supra,* held as follows:

> "The opinion in Sheppard shows that the court does no more than urge control of prejudicial pretrial publicity by the adoption and enforcement of appropriate rules and regulations. Thus, the court suggested that the making of statements by any attorney appearing in a criminal case should be prohibited by appropriate rules of court governing the professional conduct of attorneys, as was done in State v. Van Duyne, 43 N.J. 369, 204 A.2d 841, 850, 11 A. L.R.3d 1086, by its interpretation of Canon 20 of the American Bar Association Canons of Professional Ethics. At the same time the court recognized that the courts have no direct control over the dissemination of potentially prejudicial information by law enforcement officers and said that such control should be exercised by the appropriate city and county officials." (62 Cal. Rptr. at p. 446.)

If there exists a substantial doubt as to the jurisdiction of a court to restrain the utterances of other agencies of government, there can be no rational justification for an order purporting to restrain the public utterances of individuals distantly connected with the proceedings. Assuming, arguendo, the propriety of an order restraining publicity directed to law enforce-

ment agencies, the court must recognize that persons not specifically mentioned in the order, or persons unaware of the provisions of the order, may from time to time divulge or suggest to various news media the existence or purported existence of certain witnesses or evidence purportedly affecting the investigation of the instant matter. The court should further recognize that investigation on the part of duly authorized law enforcement agencies may discredit the claimed existence of such witnesses or evidence. In such event, it is respectfully submitted that in the public interest the said law enforcement agencies should be permitted to reveal to the various news media the fact of such investigation and the evaluation thereof.

CONCLUSION

There is presently existing a broad and inclusive order of this court directed toward all parties remotely connected with this case and directing said parties to refrain from making any statements relevant to this case with minor enumerated exceptions. There is in this order no statement of foundational fact necessitating the order other than the conclusion that any publicity may result in prejudice to the right of a fair trial. At the time of the issuance of the order on June 7, 1968, a review of the publicity attending this case fails to demonstrate a necessity for such an order. For these two reasons, the District Attorney therefore requests that this court consider and revoke the instant order, reserving the power to issue an appropriate order in the future, if circumstances require.

In the alternative, the District Attorney respectfully requests that the court consider a modification of the existing order by removing improperly designated per-

sons and further limiting the category of prohibited statements.

To this end, the District Attorney has prepared and appended to these points and authorities a suggested order which we conceive to be within the limits of constitutional guarantees and which will effectively serve the court's interest in protecting the defendant's right to a fair trial. This proposed order would allow representatives of law enforcement, in the public interest, to rebut misleading or untrue publicity and to dispel public speculation concerning the investigation of this case.

Respectfully submitted,

EVELLE J. YOUNGER
District Attorney of Los Angeles County

By
LYNN D. COMPTON
Chief Deputy District Attorney

Order Re Publicity.

Superior Court of the State of California, for the County of Los Angeles.

People of the State of California, Plaintiff, v. Sirhan Bishara Sirhan, Defendant. No. A-233421.

The Grand Jury returned an indictment in this matter on June 7, 1968. On that date, this court issued an Order Re Publicity. As of this date, the Order of June 7, 1968, is revoked. The following Order is now issued regarding publicity.

Under our Constitution, each defendant is entitled to the due process of the law and to a fair trial. This Court has an affirmative duty to do everything possible within its Constitutional powers and jurisdiction to make certain that each defendant does receive a fair trial.

In order to fulfill that Constitutional duty to guarantee that the defendant does receive a fair trial, and because of the obvious public interest in this matter which has produced massive news media publicity, the Court now issues the following orders, a violation of which will result in swift action to punish for contempt any offender within the jurisdiction of this Court.

It is the Order of this Court that no party to this action, nor any attorney connected with this case as defense counsel or as prosecutor, nor any witness having appeared before the Grand Jury in this matter, nor any person subpoenaed to testify at the trial of this matter, shall release or authorize the release for public dissemination of any purported extrajudicial statement of the defendant relating to this case, nor shall any such persons release or authorize the release

of any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the Court. Nor shall any such persons express outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence.

The Court recognizes that persons not specifically mentioned in this Order may, from time to time, divulge or suggest to various news media the existence or possible existence of certain witnesses or evidence purportedly affecting the investigation of the instant matter and recognizes that investigation on the part of duly authorized law enforcement agencies may discredit the claimed existence of such witnesses or evidence. In such event, the said law enforcement agencies shall be permitted in the public interest to reveal to the various news media the face of such investigation, the evaluation thereafter and the reasons therefor.

Further, this Order is not intended to preclude any witness from discussing any matter in connection with the case with any of the attorneys representing the defendant or the People, or any representative of such attorneys.

It is further ordered that a copy of this Order be attached to any subpoena served on any witness in this matter, and that the return of service of the subpoena shall also include the fact of service of a copy of this Order.

This Order shall be in force until this matter has been disposed of or until further order of the Court.

Dated: This .... day of ....', 1968.

ARTHUR L. ALARCON
Judge of the Superior Court

APPENDIX E.

Order Re Publicity.

Superior Court of the State of California, for the County of Los Angeles.

People of the State of California, Plaintiffs, vs. Sirhan Bishara Sirhan, Defendant. No. A 233421.

Under our Constitution, each defendant is entitled to the due process of the law and to a fair trial. This Court has an affirmative duty to do everything possible within its constitutional powers and jurisdiction to make certain that each defendant does receive a fair trial.

In order to fulfill that constitutional duty to guarantee that the defendant does receive a fair trial, and because of the obvious public interest in this matter which has produced massive news media publicity, and it further appearing to the Court that the dissemination by any means of public communication of any out-of-court statements relating to this case may interfere with the constitutional right of the defendant to a fair trial and disrupt the proper administration of justice, the Court, on its own motion, will now issue the following orders, a violation of which will result in swift action to punish for contempt any offender within the jurisdiction of this Court.

It is the order of this Court that no party to this action, nor any attorney connected with this case as defense counsel or as prosecutor, nor any other attorney associated with this case, nor any judicial attache or employee, nor any public official, including but not limited to any chief of police or any sheriff, who has obtained information related to this action, which in-

formation has not previously been disseminated to the public, nor any agent, deputy, or employee of any such persons, nor any grand juror, nor any witness having appeared before the Grand Jury in this matter, nor any person subpoenaed to testify at the trial of this matter, shall release or authorize the release for public dissemination of any purported extrajudicial statement of the defendant relating to this case, nor shall any such persons release or authorize the release of any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the Court, nor shall any such person make any statement for public dissemination as to the existence or possible existence of any document, exhibit, or any other evidence, the admissibility of which may have to be determined by the Court. Nor shall any such persons express outside of court an opinion or make any comment for public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence. Nor shall any such persons make any statement outside of court for public dissemination as to the weight, value, or effect of any testimony that has been given. Nor shall any such persons issue any statement for public dissemination as to the identity of any prospective witness, or his probable testimony, or the effect thereof. Nor shall any such person make any out-of-court statement for public dissemination as to the weight, value, source, or effect of any purported evidence alleged to have been accumulated as a result of the investigation of this matter. Nor shall any such person make any statement for public dissemination as to the content, nature, substance, or effect of any testimony which may be given in any proceeding related

to this matter, except that a witness may discuss any matter with any attorney of record or agent thereof.

This order does not include any of the following:

1. Factual statements of the accused person's name, age, residence, occupation, and family status.

2. The circumstances of the arrest, namely, the time and place of the arrest, the identity of the arresting and investigating officers and agencies, and the length of the investigation.

3. The nature, substance, and text of the charge, including a brief description of the offenses charged.

4. Quotations from, or any reference without comment to, public records of the Court in the case, or to other public records or communications heretofore disseminated to the public.

5. The scheduling and result of any stage of the judicial proceeding held in open court in an open or public session.

6. A request for assistance in obtaining evidence.

7. Any information as to any person not in custody who is sought as a possible suspect or witness, nor any statement aimed at warning the public of any possible danger as to such person not in custody.

8. A request for assistance in the obtaining of evidence or the names of possible witnesses.

Further, this order is not intended to preclude any witness from discussing any matter in connection with the case with any of the attorneys representing the defendant or the People, or any representative of such attorneys.

It is further ordered that a copy of this order be attached to any subpoena served on any witness in this matter, and that the return of service of the subpoena shall also include the fact of service of a copy of this order.

This order shall be in force until this matter has been disposed of or until further order of Court.

Dated: August 2, 1968.

/s/ RICHARD SCHAUER
Richard Schauer
Judge of the Superior Court

EXHIBIT 2.

Los Angeles, Cal. Sep. 25, 1968

Title Younger Superior Court L.A. CO. No. 33638.

The Court: Petition for writ of mandate and prohibition denied.

Clay Robbins, Clerk

APPENDIX II.

Notice of Intention to Petition for Writ of Certiorari in the Supreme Court of the United States and Request for Certification of Record.

Court of Appeal of the State of California, Second Appellate District.

Evelle J. Younger, District Attorney of the County of Los Angeles, State of California, Petitioner, v. Superior Court of the State of California for the County of Los Angeles, Respondent, Sirhan Bishara Sirhan, Real Party in Interest. 2d Civ. 33638.

Petitioner hereby gives notice to the above-designated respondent and real party in interest of intention to petition for a writ of certiorari in the Supreme Court of the United States and hereby requests certification of record in the Court of Appeal to consist of the following:

(1) Petition for writ of certiorari in the Supreme Court or prohibition;

(2) Order denying said petition;

(3) Petition for hearing; and

(4) Notice of Supreme Court of California denying hearing in said matter.

DATED: This 14 day of October, 1968.

Respectfully submitted,
/s/ EVELLE J. YOUNGER
Evelle J. Younger
District Attorney of the
County of Los Angeles,
State of California
Petitioner in Propria Persona

DECLARATION OF SERVICE BY MAIL

State of California, County of Los Angeles—ss.

I, the undersigned, hereby declare under penalty of perjury, that the following is true and correct:

I am a citizen of the United States, over eighteen years of age, not a party to the within cause and employed in the Office of the District Attorney of Los Angeles County, with principal offices located at 600 Hall of Justice, Los Angeles, California 90012; that the District Attorney is one of the attorneys for the Plaintiff in the above-entitled matter. On October 14, 1968, I served the foregoing Notice of Intention to Petition for Writ of Certiorari in the Supreme Court of the United States and Request for Certification of Record on Honorable Donald R. Wright, the attorney of record for the Respondent in said action, by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the City of Los Angeles, California addressed to his office (or residence) as follows: Hon. Donald R. Wright, Presiding Judge, Superior Court of the State of California for the County of Los Angeles, County Court House, 111 North Hill Street, Los Angeles, California 90012.

Executed on October 14, 1968, at Los Angeles, California.

/s/ JANIS TANIKAWA
Janis Tanikawa

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IN THE

Supreme Court of the United States

October Term, 1968
No. 687

EVELLE J. YOUNGER, District Attorney of the County of Los Angeles, State of California,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

SIRHAN BISHARA SIRHAN,

Real Party in Interest.

On Petition for a Writ of Certiorari to the Court of Appeal and Supreme Court of California.

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION.

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IN THE

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October Term, 1968
No. 687

EVELLE J. YOUNGER, District Attorney of the County of Los Angeles, State of California,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

SIRHAN BISHARA SIRHAN,

Real Party in Interest.

On Petition for a Writ of Certiorari to the Court of Appeal and Supreme Court of California.

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION.

1. *The order in question is not unsupported by any showing that the publicity proscribed by the order would infringe upon the defendant's right to a fair trial.* (Petn. for Cert. p. 8.) At the time the order was made there had already been substantial publicity. The newsworthy nature of the case is such that it was and is a certainty that the publicity would continue and would likely be prejudicial to the defendant unless judicially controlled as recommended by this Court in *Sheppard v. Maxwell,* (1966) 384 U.S. 333 [16 L. Ed.

2d 600, 86 Sup. Ct. 1507]. A further consideration is that in this case the prejudicial effect of pretrial publicity cannot be avoided or alleviated by change of venue and sequestration of jurors and witnesses because the case is one of national and state-wide interest. In making the order in question the trial court relied on the recommendations of the American Bar Association Project on Minimum Standards for Criminal Justice (Reardon Report). It is also believed that the order is supported by the United States Judicial Conference Report of the Committee on the Operation of the Jury System on the "Free Press-Fair Trial" Issue (Kaufman Report), which specifically recommends special orders in widely publicized and sensational cases.

2. *The order in question does not totally suppress the public's only possible sources of information.* (Petn. for Cert. p. 3.) The order, by its terms, does not restrict all extrajudicial statements as it expressly follows the Reardon Report in specifying the types of information that can be disseminated. Substantially the same recommendations are made in the Kaufman Report. The order is also not an absolute restriction of other extrajudicial statements in that the District Attorney, as well as any other interested party, may apply to the court for permission to disclose specified information, at which time the court will rule after hearing the defendant's objection, if any, that the disclosure would be prejudicial. The order, of course, does not restrict publicity of proceedings had in open court. The order also does not reach or deal with the separate problem of whether and to what extent to restrict publication of proceedings during trial outside the presence of the jury.

3. *The order in question does not restrain freedom of the press.* The order proscribes the making of certain extrajudicial statements by attorneys, parties, witnesses, grand jurors, court personnel, police, and other public officials. It is not directed to the news media.

Respectfully submitted,

BALL, HUNT, HART & BROWN,
JOSEPH A. BALL,
JOSEPH D. MULLENDER, JR.,
Attorneys for the Superior Court of the State of California for the County of Los Angeles.